

APPEAL NO. 030620
FILED APRIL 30, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 18, 2003. The hearing officer determined that the respondent (claimant) was not entitled to supplemental income benefits (SIBs) for the second, third, and fifth quarters; that the claimant was entitled to SIBs for the fourth quarter; and that the claimant has not permanently lost entitlement to SIBs pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.106(a) (Rule 130.106(a)) (and Section 408.146(c)). The hearing officer's determinations on nonentitlement for the second, third, and fifth quarters of SIBs have not been appealed and have become final. Section 410.169.

The appellant (carrier) appeals the determinations that the claimant is entitled to SIBs for the fourth quarter and that the claimant has not permanently lost entitlement to income benefits. The appeal file does not have a response from the claimant.

DECISION

Affirmed.

Basically this case was tried on the documentary evidence. Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Rule 130.102. The claimant in this case proceeds on alternative theories of a total inability to work in any capacity (Rule 130.102(d)(4)) and a good faith job search pursuant to Rules 130.102(d)(5) and 130.102(e).

During the qualifying period for the fourth quarter, the hearing officer found that while the claimant did not meet the requirements of Rule 130.102(d)(4) (a total inability to work), the claimant did make and document 26 jobs contacts in person with 19 job applications and documented at least one in-person job contact each week of the qualifying period, thereby meeting the requirements of a good faith effort to obtain employment commensurate with her ability to work and that the claimant's unemployment was a direct result of the impairment from the compensable injury.

The carrier appeals the decision on a sufficiency of the evidence basis, arguing "that this case turns on the credibility of the witnesses" and that because the claimant was alternatively pleading a total inability to work pursuant to Rule 130.102(d)(4), that shows that her job contact efforts were not in good faith.

We have many times noted that by statute the hearing officer is the sole judge of the weight and credibility to be given to the evidence (Section 410.165(a)) and that the Appeals Panel would not substitute its judgment for that of the hearing officer when the determination is not so against the great weight of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Texas Workers'

Compensation Commission Appeal No. 022351, decided October 30, 2002. However, it appears that is what the carrier is requesting we do. We decline to do so and hold the hearing officer's decision is supported by sufficient evidence.

Accordingly the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS PUBLIC WORKERS' COMPENSATION PROGRAM** and the name and address of its registered agent for service of process is

**JERRY EDWARDS
101 HWY 281, SUITE 304
MARBLE FALLS, TEXAS 78654.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge